



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Neil P. Reiff, Esquire
Stephen E. Hershkowitz, Esquire
Sandler, Reiff & Young, P.C.
300 M Street, S.E.
Suite 1102
Washington, D.C. 20003

MAR 17 2009

RE: MUR 6049
Kosmas for Congress and Trudy Duffy, in
her official capacity as treasurer
Democratic Executive Committee of Florida
and Rudy Parker, in his official capacity as
treasurer

Dear Mr. Reiff and Mr. Hershkowitz:

On August 19, 2008, the Federal Election Commission notified your clients, Kosmas for Congress and Trudy Duffy, in her official capacity as treasurer, and the Democratic Executive Committee of Florida and Rudy Parker, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On March 9, 2009, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Kosmas for Congress and Trudy Duffy, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(d), 441a(f), 434(b) and 441h, and no reason to believe that the Democratic Executive Committee of Florida and Rudy Parker, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(d) and 441a(a)(2)(A). The Commission also dismissed the allegation that the Democratic Executive Committee of Florida violated 2 U.S.C. § 434(b). Accordingly, the Commission closed its file in this matter.

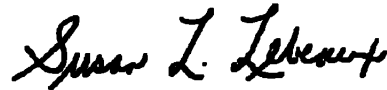
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which explain the Commission's findings, are enclosed for your information.

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Neil P. Reiff, Esquire
Stephen E. Hershkowitz, Esquire
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If you have any questions, please contact Kathryn Lefeber, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Susan L. Lebeaux
Assistant General Counsel

Enclosures

Factual and Legal Analysis for Kosmas for Congress

Factual and Legal Analysis for the Democratic Executive Committee of Florida

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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7 **RESPONDENTS: Kosmas for Congress, and Trudy Duffy, MUR 6049**
8 **in her official capacity as treasurer**
9
10

11 **I. INTRODUCTION**

12 This matter was generated by a complaint filed with the Federal Election Commission by
13 Thomas Fitton, on behalf of Judicial Watch, Inc. See 2 U.S.C. § 437g(a)(1). The complaint in
14 this matter alleges that Kosmas for Congress and Trudy Duffy, in her official capacity as
15 treasurer, ("Kosmas Committee") violated the Federal Election Campaign Act of 1971, as
16 amended ("the Act"), in numerous ways. Specifically, it alleges that the Kosmas Committee
17 utilized FDP offices as its campaign headquarters, failed to disclose the related expenditures to
18 the Commission, and that its staff members made phone calls misrepresenting themselves as
19 FDP employees, advocating for Suzanne Kosmas' election.

20 As described in more detail below, it appears that FDP made coordinated party
21 expenditures on behalf of Kosmas for Congress before the primary election, but it is unlikely
22 those expenditures collectively surpassed the \$42,100 maximum a state party may make on
23 behalf of candidate under 2 U.S.C. § 441a(d) or the additional \$5,000 FDP could have
24 contributed to the Kosmas Committee in the primary under 2 U.S.C. § 441a(a)(2)(A). Therefore,
25 the Commission has found no reason to believe that the Kosmas Committee received excessive
26 in-kind contributions in violation of 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f), no reason to believe
27 the Kosmas Committee failed to properly report to the Commission contributions from the FDP

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in violation of 2 U.S.C. § 434(b), and no reason to believe the Kosmas Committee knowingly misled voters in violation of 2 U.S.C. § 441h, and closed the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Suzanne Kosmas was a candidate in the August 26, 2008 Democratic primary for Florida's 24th Congressional District. The complaint alleges that the Kosmas Committee used Democratic Executive Committee of Florida ("Florida Democratic Party" or "FDP") offices as its campaign headquarters and failed to properly disclose to the Commission the use of the office as a contribution from FDP. Complaint at 2. In support of the allegation, the complaint attached an e-mail inviting Kosmas supporters to a "grand opening party" at the address of the FDP office in Titusville, Florida. *Id.* at 2. It also included pictures of an FDP office in Oviedo, Florida with Kosmas signs in the windows, and allegedly Kosmas Committee staff in the office.

Additionally, the complaint contends that Kosmas Committee staff made phone calls on phone lines paid for by the FDP, promoting Kosmas to Democratic primary voters. Allegedly, the caller ID of the phone lines initially stated that the calls were from Kosmas for Congress, but later the ID was changed to reflect that the phone lines belonged to the FDP. *Id.* The complaint states "I was told that the script" that Kosmas Committee volunteers allegedly used when making the calls, states: "Hello, this is 'callers name' calling from the Florida Democratic Party, I am calling to ask you to support Suzanne Kosmas for Congress." *Id.* at 3. Attached to the complaint is an e-mail from a recipient of a call that describes his conversation with the alleged Kosmas Committee staffer and states the call was made from phone number 407-365-7808, that the caller ID for the number was "KOSMAS FOR CONG," and that the call was made at 12:07 pm on

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1 July 30, 2008. *Id.*, Attachment 2. The calls were allegedly “repeated all across the district,” and
2 the complaint suggests that “hundreds if not thousands” of the calls were made. *Id.*

3 The Kosmas Committee maintains that it did not use any FDP office space. Response at
4 1. According to the response, the FDP began supporting Kosmas in July 2008 after she became
5 the presumptive Democratic nominee in the congressional race, and invited the Kosmas
6 Committee and other state Democratic candidates to send campaign literature to the Party’s
7 offices. However, as evidence that the Kosmas Committee did not use the space, FDP removed
8 the Kosmas Committee materials after the complainant, Kosmas’ primary opponent, requested
9 that it do so. *Id.* at 4. The Kosmas Committee did not address the “grand opening party” e-mail
10 referenced in the complaint.

11 Available information indicates that the FDP used its own employees and volunteers to
12 make voter identification calls. The response provided a different version of the script used,
13 which read, in relevant part, “Hi, my name is _____, and I’m a volunteer in your
14 neighborhood with the Campaign for Florida. Have you decided who you will be supporting for
15 Congress in the elections in November?” *Id.* at 2. Individuals called who responded they were a
16 “strong” supporter of “SK [Suzanne Kosmas]” were thanked for their support and asked to
17 consider volunteering for the Kosmas Committee. *Id.* If individuals responded they “Lean SK,”
18 “UND [completely undecided],” or “Lean TF [Tom Feeney],” the script states they were told
19 “Great, well I hope you will consider supporting Suzanne. We need a strong, independent voice
20 and someone who will truly represent us in Washington.” *Id.* The script also lists three
21 questions regarding voting preferences in the races for State House Districts 24 and 32 and the

¹ Tom Feeney was the incumbent member of Congress in Florida’s 24th Congressional District, and was the Republican nominee for the 2008 general election who ran against Suzanne Kosmas.

1 race for Brevard Supervisor of Elections, and included a sentence describing the Democratic
2 candidate's credentials in each race. *Id.* at 3. The script closes by stating "Thank you so much
3 for your time today! Please visit www.KosmasForCongress.com" and "Paid for by the Florida
4 Democratic Party and authorized by Suzanne Kosmas for Congress. This call has been paid for
5 by the Florida Democratic Party." *Id.* Attached to the response are payroll and W-4 forms for
6 three employees that the response states are FDP staff members that supervised volunteers
7 making the calls. *Id.* The attachments contain personal and salary information for the
8 employees, but no information about hours worked or tasks performed. *Id.*, Exhibit 1.

9 The response maintains that the caller ID on the phone lines at the FDP was initially
10 listed as Kosmas for Congress, but that it was a telephone company error. *Id.* at 3. Available
11 information indicates that when alerted to the problem, FDP immediately contacted the
12 telephone company and corrected the caller ID information to show the phone lines belonged to
13 the FDP. *Id.* The response claims that FDP paid for the calls, and attached a telephone bill as
14 proof of the payment. *Id.* at 3, Exhibit 2. The phone bill lists set-up and service charges from
15 July 15 through August 22, 2008 for 17 phone lines, eight of which were created on July 14,
16 2008 and nine of which were created on July 21, 2008, totaling \$1,723.43. *Id.* Exhibit 2.
17 "FLORIDA DEMOCRATIC PARTY" appears at the top of the bill, with a mailing address of
18 214 S Bronough Street, Tallahassee, FL 32301. *Id.* The phone number the complaint alleged
19 had the caller ID of "KOSMAS FOR CONG" was listed on the phone bill as one of the phone
20 lines established on July 21, 2008. Finally, the response states that FDP made and disclosed all
21 2 U.S.C. § 441a(d) expenditures related to the voter identification calls that included references
22 to Kosmas but did not include the amount of the expenditures. *Id.* at 5.

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1 In its August Monthly Report, covering the period of July 2, 2008-July 31, 2008, FDP
2 disclosed that it made no coordinated party expenditures. In its September Monthly Report,
3 covering the period of August 1, 2008-August 31, 2008, FDP disclosed that it made \$5,068.66 in
4 coordinated party expenditures. According to the FEC disclosure database, FDP made \$5,068.66
5 in coordinated party expenditures, all before the August 26, 2008 primary election. FDP,
6 however, failed to file the requisite Schedule F disclosing how the funds were spent and which
7 federal candidates it supported with the expenditures. On its 12-Day Pre-General Report, FDP
8 disclosed to the Commission that its total coordinated party expenditures for the 2008 general
9 election were \$31,367, but FDP again failed to file the requisite Schedule F, disclosing how the
10 funds were spent and which federal candidates it supported with the expenditures. Neither the
11 FDP's or the Kosmas Committee's reports disclose any FDP contributions to the Kosmas
12 Committee during the 2008 cycle under 2 U.S.C. § 441a(a)(2)(A).

13 **B. Analysis**

14 **1. Coordinated Party Expenditures**

15 The complaint identifies two ways that the FDP may have made coordinated party
16 expenditures on behalf of the Kosmas Committee: (1) by using FDP phone lines for phone banks
17 advocating Suzanne Kosmas' election, and (2) by using FDP office space. In the 2008 cycle,
18 FDP was eligible to spend \$42,100 in coordinated expenditures on behalf of a candidate for the
19 House of Representatives in the general election, including expenditures made both before and
20 after a candidate receives the party's nomination.² 2 U.S.C. § 441a(d), 11 C.F.R. § 109.34, 73
21 Fed. Reg. 8696 (Feb. 14, 2008). In addition to coordinated party expenditures, FDP was

² A state political party may make coordinated party expenditures before or after a candidate has been nominated, and all pre-nomination coordinated party expenditures are subject to the limitations whether or not the candidate receives the party's nomination. 11 C.F.R. § 109.34.

permitted to make contributions of \$5,000 for both the primary and general elections to candidate committees under 2 U.S.C. § 441a(a)(2)(A). Any expenditure made by FDP "in cooperation, consultation or concert, with, or at the request or suggestion of," Suzanne Kosmas or the Kosmas Committee constitutes a contribution to the Kosmas Committee, and counts towards FDP's coordinated party expenditure limits or its contribution limits. 2 U.S.C. § 441a(a)(7)(B)(i). As discussed below, it appears that the potential coordinated party expenditures alleged in the complaint, if they in fact occurred in whole or in part, do not exceed the \$42,100 coordinated party expenditure limit allotted to the FDP for making expenditures on behalf of Suzanne Kosmas and the contribution limit to the Kosmas Committee.

a. Phone Bank

The complaint alleges that Kosmas Committee staff utilized FDP phone lines for a phone bank in which the Kosmas Committee staff represented themselves as FDP employees and advocated for Suzanne Kosmas' election. Under the Commission's regulations, a political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of the candidate and therefore constitutes an expenditure on behalf of the candidate, when the communication satisfies the three-pronged test set forth in 11 C.F.R. § 109.37: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the content standards set forth in 11 C.F.R. § 109.37(a)(2); and (3) the communication satisfies at least one of the conduct standards set forth in 11 C.F.R. § 109.21(d). As explained below, it appears that the telephone calls in question meet all three prongs and therefore are coordinated political party communications.

The first requirement, or the payment prong, is met when the communication is paid for by a political party committee. Since available information indicates that FDP paid for the

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1 telephone calls, and provided its telephone bills as proof of payment, the first prong is met.

2 11 C.F.R. § 109.37(a)(1), Response at 1, Exhibit 2.

3 The second prong, the content standard, is satisfied if, in relevant part, a public
4 communication refers to a clearly identified House candidate and is publicly disseminated in the
5 clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary
6 election. 11 C.F.R. § 109.37(a)(2)(iii)(A). A "public communication" includes a "phone bank,"
7 or more than 500 telephone calls of identical or substantively similar nature within any 30-day
8 period. 2 U.S.C. §§ 431(22) and (24). It appears that the calls in question are a phone bank, and
9 therefore a public communication, because respondents did not dispute the allegation that
10 "hundreds if not thousands" of calls were made across the district, the calls were similar in
11 content because there they were based on a script, and the calls were made within a 30 day time
12 period, from at least from July 30, 2008, as indicated in the complaint, until the complaint was
13 filed on August 12, 2008. The calls satisfy the remaining criteria for the second prong because
14 the calls referred to Suzanne Kosmas, included express advocacy messages of support for
15 Kosmas, and the calls took place within 90 days before the August 26, 2008 primary election in
16 Florida's 24th congressional district. See MUR 5564 (Knowles) (phone calls satisfied the content
17 prong when the calls qualified as public communications because they clearly referenced Senate
18 candidate Tony Knowles and a majority were made within 90 days of the primary election to all
19 Alaska residents).

20 The third prong, or the conduct standard, is fulfilled, in relevant part, if the
21 communication "is created, produced, or distributed at the suggestion of a person paying for the
22 communication and the candidate, authorized committee, or political party committee assents to
23 the suggestion" whether or not there is agreement or formal collaboration. 11 C.F.R.

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1 § 109.21(d)(1)(ii). The complaint suggests that Kosmas Committee staff were involved in
2 making the calls. The response states that the phone calls were made by FDP volunteers,
3 supervised by FDP staff, and explicitly states, at the bottom of the script "authorized by Suzanne
4 Kosmas for Congress." Response at 3. Since the Kosmas Committee assented to the calls by
5 authorizing them, the phone communications satisfy the conduct standard. Given that the phone
6 calls fulfill all three of the party coordinated communication prongs, the phone calls are party
7 coordinated communications. *See* MUR 5564 (Knowles) (the Alaska Democratic Party's
8 expenditures for phone calls constituted party coordinated communications when the calls were
9 public communications, referenced the candidate, were made in the requisite time period and the
10 candidate's committee was materially involved in the content of the communications).

11 To determine the costs attributable to the Kosmas Committee, the Commission's
12 regulations specify that "[i]n the case of a phone bank, the attribution shall be determined by the
13 number of questions or statements devoted to each candidate as compared to the total number of
14 questions or statements devoted to all candidates." 11 C.F.R. § 106.1(a). The complaint's
15 description of the alleged "script," based on one recipient's phone conversation, only references
16 Suzanne Kosmas. Complaint, Attachment 2. The script provided in the response contains four
17 questions regarding four different Democratic candidates, including Suzanne Kosmas, and also
18 directs callers to visit the Kosmas Committee web site. Response at 3. Further, available
19 information indicates that FDP "used [section] 441a(d) funds to pay the salaries and the
20 telephone charges related to these voter identification calls," but it does not provide any
21 information about the total dollar amount of coordinated party expenditure funds used. *Id.*
22 According to the phone bill attached to the response, FDP incurred charges of \$1,723.43 for
23 phone service and set-up during the time period of July 15, 2008-August 22, 2008. *Id.*, Exhibit

2. In addition, attached to the response is the salary authorization information for three FDP employees: Kristin Tilley, hired July 1, 2008 and paid \$1,750 bi-monthly; Paolo Mastrangelo, hired July 14, 2008 and paid \$1,000 bi-monthly; and Michael Yaros, hired July 21, 2008 and paid \$1,000 bi-monthly. *Id.*, Exhibit 1. The salary authorizations do not include total salary costs for the phone banks, but pro-rated salaries for the three employees for July 15-31 and August 1-26, 2008, the time period between the phone line set-up and the primary, yield a total salary calculation of \$9,894.58, if the employees' entire salary were attributed to the phone bank. Thus, based on the available information, the total cost of the entire phone bank, including salaries and phone costs, could be as high as \$11,600 dollars.

The available information does not adequately resolve the amount of coordinated party expenditures that FDP should have allocated for the phone banks. However, we do not recommend the Commission use its resources to investigate this matter because even if all of the costs of phone set-up, service and the salaries of the three employees provided were attributed to the Kosmas Committee, the amount would likely not exceed the \$42,100 coordinated party expenditure limit.

b. Use of FDP Office Space as Kosmas Committee Headquarters

The complaint alleges that the Kosmas Committee utilized FDP office space. The Commission's regulations state that expenditures for rent, personnel, overhead, general administrative and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate. 11 C.F.R. § 106.1(c)(1). If the Kosmas Committee was actually utilizing the FDP office as its campaign office, the cost of using the facilities, including the rent, utilities and possibly office equipment

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1 would be expenditures directly attributed to Kosmas, and would be applied to FDP's coordinated
2 party expenditure limit or its contribution limit. *See* 11 C.F.R. § 109.20(b).

3 The available information, however, does not indicate that the Kosmas Committee did so.
4 The information currently available shows that FDP has refuted the complaint's allegations by
5 stating that it invited the Kosmas Committee and other state Democratic candidates to send
6 campaign literature to the FDP for display and hung Kosmas posters in FDP office windows
7 following that request. Response at 2. It further explains that the signs were taken down when
8 the complainant complained. *Id.* at 4. The response also maintains that the alleged Kosmas
9 staffers that the complaint asserts were seen in a FDP office were actually former Kosmas
10 Committee staff employed by FDP at the time. *Id.* Moreover, available information indicates
11 that the caller ID on FDP phone lines that stated "Kosmas Committee" was an error by the phone
12 company, and was corrected when FDP discovered the error. *Id.* at 3. The response does not
13 address the e-mail attached to the complaint, sent by a Kosmas Committee staffer that invites
14 Kosmas supporters to a grand opening party, and lists "our address" as 213 South Hopkins
15 Avenue in Titusville. Publicly available information lists 213 South Hopkins Avenue in
16 Titusville as an FDP office. The Kosmas Committee's website identifies its campaign office
17 address as 920 3rd Avenue, New Smyrna Beach, Florida.

18 It appears that the FDP had several offices in Florida, including the office in Titusville
19 where the alleged Kosmas "grand opening party" was held, and an office in Oviedo, FL, which
20 was featured in the attachment to the complaint with the pictures of the alleged Kosmas
21 Committee office. While the Kosmas Committee may have used FDP office space for events,
22 the publicly available information on the location of the offices and the factual assertions in the
23 response indicate that the Kosmas Committee did not use FDP office space as its campaign

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office as alleged. Specifically, the available information indicating that FDP's staff and volunteers, not the Kosmas Committee staff, made the phone bank calls from its own phone lines, and that the caller ID of "Kosmas Committee" on the phone line was a mistake, refutes the complaint's key allegation that may have indicated the Kosmas Committee was using FDP's space as the Kosmas campaign office. Available information indicating that FDP's removed Kosmas campaign posters from its office windows after the complainant requested it do so, and that the alleged Kosmas employees who were purportedly seen in FDP offices were actually FDP employees who no longer worked for the Committee further undercuts the premises of the complaint's allegation. Accordingly, FDP's expenditures for rent, personnel, overhead, general administrative and other day-to-day costs associated with its offices were not made on behalf of Suzanne Kosmas nor were they directly attributable to Suzanne Kosmas. See 11 C.F.R. § 106.1(c). Therefore, FDP's expenditures for such costs need not be attributed to its coordinated party expenditure limit or its contribution limit to the Kosmas Committee. While it is possible that the Kosmas Committee might have owed FDP a rental fee for the use of space for an event if FDP charges others such fees, which may have constituted an additional coordinated expenditure, the cost would likely have been *de minimus*.

c. Conclusion

Based on the foregoing, FDP's activities benefitting the Kosmas Committee were likely in amounts below the \$42,100 coordinated party limit. As such, the Kosmas Committee would not have received a contribution from FDP in excess of the \$5,000 maximum limit per election. Therefore, the Commission has found no reason to believe that the Kosmas Committee violated 2 U.S.C. § 441a(f).

2. Disclosure of Coordinated Party Expenditures

The complaint suggests that the Kosmas Committee failed to properly disclose to the Commission expenditures FDP made on behalf of the Kosmas Committee for phone banks and office space. It appears, however, that all of the expenditures FDP made on behalf of the Kosmas Committee were coordinated party expenditures, and neither the Act nor the Commission's regulations require the Kosmas Committee to report the coordinated party expenditures FDP made on its behalf. Therefore, the Commission has found no reason to believe that the Kosmas Committee violated 2 U.S.C. § 434(b) by failing to properly disclose its coordinated party expenditures.

3. Alleged Misrepresentation

The complaint alleges that the Kosmas Committee knowingly misled the public through telephone communications in which Kosmas Committee staff represented themselves as FDP staff. Complaint at 1. The Act prohibits any candidate or employee or agent of such a candidate from fraudulently misrepresenting himself, or any committee under his control, as speaking or writing or otherwise acting for or on behalf of any other political party or employee or agent thereof, on a matter that is damaging to such other political party or employee or agent thereof. 2 U.S.C. § 441h(a)(1). While the complaint claims that Kosmas Committee staff represented themselves as FDP staff, the Kosmas Committee denies any misrepresentation and explains that FDP staff and volunteers, not the Kosmas Committee, made the calls. Response at 5. Moreover, there is no allegation that the calls contained information damaging to the FDP. Accordingly, the Commission has found no reason to believe that the Kosmas Committee misled the public in violation of 2 U.S.C. § 441h.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic Executive Committee of Florida, **MUR 6049**
and Rudy Parker, in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Thomas Fitton, on behalf of Judicial Watch, Inc. See 2 U.S.C. § 437g(a)(1). The complaint in this matter alleges that the Democratic Executive Committee of Florida and Rudy Parker, in his official capacity as treasurer, ("Florida Democratic Party" or "FDP") violated the Federal Election Campaign Act of 1971, as amended ("the Act") by allowing the Kosmas Committee to utilize FDP offices as its campaign headquarters and by failing to disclose the related expenditures to the Commission.

As described in more detail below, it appears that FDP made coordinated party expenditures on behalf of Kosmas for Congress before the primary election, but it is unlikely those expenditures collectively surpassed the \$42,100 maximum a state party may make on behalf of candidate under 2 U.S.C. § 441a(d) or the additional \$5,000 FDP could have contributed to the Kosmas Committee in the primary under 2 U.S.C. § 441a(a)(2)(A). Therefore, the Commission has found no reason to believe that the FDP exceeded the coordinated party expenditure limits in violation of 2 U.S.C. § 441a(d) and that the FDP made excessive in-kind contributions in violation of 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f). The Commission has also exercised its prosecutorial discretion and dismissed the allegation that FDP failed to properly report its coordinated party expenditures under 2 U.S.C. § 434(b), and closed the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Suzanne Kosmas was a candidate in the August 26, 2008 Democratic primary for Florida's 24th Congressional District. The complaint alleges that the Kosmas Committee used FDP offices as its campaign headquarters and that the FDP failed to properly disclose to the Commission the use of the office as a contribution to the Kosmas Committee. Complaint at 2. In support of the allegation, the complaint attached an e-mail inviting Kosmas supporters to a "grand opening party" at the address of the FDP office in Titusville, Florida. *Id.* at 2. It also included pictures of an FDP office in Oviedo, Florida with Kosmas signs in the windows, and allegedly Kosmas Committee staff in the office.

Additionally, the complaint contends that Kosmas Committee staff made phone calls on phone lines paid for by the FDP, promoting Kosmas to Democratic primary voters. Allegedly, the caller ID of the phone lines initially stated that the calls were from Kosmas for Congress, but later the ID was changed to reflect that the phone lines belonged to the FDP. *Id.* The complaint states "I was told that the script" that Kosmas Committee volunteers allegedly used when making the calls, states: "Hello, this is 'callers name' calling from the Florida Democratic Party, I am calling to ask you to support Suzanne Kosmas for Congress." *Id.* at 3. Attached to the complaint is an e-mail from a recipient of a call that describes his conversation with the alleged Kosmas Committee staffer and states the call was made from phone number 407-365-7808, that the caller ID for the number was "KOSMAS FOR CONG," and that the call was made at 12:07 pm on July 30, 2008. *Id.*, Attachment 2. The calls were allegedly "repeated all across the district," and the complaint suggests that "hundreds if not thousands" of the calls were made. *Id.*

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1 FDP maintains in its response to the complaint that the Kosmas Committee did not use
2 any FDP office space. Response at 1. FDP explains that it began supporting Kosmas in July
3 2008 after she became the presumptive Democratic nominee in the congressional race, and
4 invited the Kosmas Committee and other state Democratic candidates to send campaign literature
5 to the Party's offices. However, as evidence that the Kosmas Committee did not use the space,
6 FDP notes that it removed the Kosmas Committee materials after the complainant, Kosmas'
7 primary opponent, requested that it do so. *Id.* at 4. FDP did not address the "grand opening
8 party" e-mail referenced in the complaint.

9 FDP further maintains that it used its own employees and volunteers to make voter
10 identification calls. It also provided a different version of the script used, which read, in relevant
11 part, "Hi, my name is _____, and I'm a volunteer in your neighborhood with the Campaign
12 for Florida. Have you decided who you will be supporting for Congress in the elections in
13 November?" *Id.* at 2. Individuals called who responded they were a "strong" supporter of "SK
14 [Suzanne Kosmas]" were thanked for their support and asked to consider volunteering for the
15 Kosmas Committee. *Id.* If individuals responded they "Lean SK," "UND [completely
16 undecided]," or "Lean TF [Tom Feeney]," the script states they were told "Great, well I hope
17 you will consider supporting Suzanne. We need a strong, independent voice and someone who
18 will truly represent us in Washington." *Id.* The script also lists three questions regarding voting
19 preferences in the races for State House Districts 24 and 32 and the race for Brevard Supervisor
20 of Elections, and included a sentence describing the Democratic candidate's credentials in each
21 race. *Id.* at 3. The script closes by stating "Thank you so much for your time today! Please visit

¹ Tom Feeney was the incumbent member of Congress in Florida's 24th Congressional District, and was the Republican nominee for the 2008 general election who ran against Suzanne Kosmas.

1 www.KosmasForCongress.com" and "Paid for by the Florida Democratic Party and authorized
2 by Suzanne Kosmas for Congress. This call has been paid for by the Florida Democratic Party."
3 *Id.* Attached to the response are payroll and W-4 forms for three employees that the response
4 states are FDP staff members that supervised volunteers making the calls. *Id.* The attachments
5 contain personal and salary information for the employees, but no information about hours
6 worked or tasks performed. *Id.*, Exhibit 1.

7 The response admits that the caller ID on the phone lines at the FDP was initially listed as
8 Kosmas for Congress, but that it was a telephone company error. *Id.* at 3. When alerted to the
9 problem, FDP states that it immediately contacted the telephone company and corrected the
10 caller ID information to show the phone lines belonged to the FDP. *Id.* The response claims that
11 FDP paid for the calls, and attached a telephone bill as proof of the payment. *Id.* at 3, Exhibit 2.
12 The phone bill lists set-up and service charges from July 15 through August 22, 2008 for 17
13 phone lines, eight of which were created on July 14, 2008 and nine of which were created on
14 July 21, 2008, totaling \$1,723.43. *Id.* Exhibit 2. "FLORIDA DEMOCRATIC PARTY" appears
15 at the top of the bill, with a mailing address of 214 S Bronough Street, Tallahassee, FL 32301.
16 *Id.* The phone number the complaint alleged had the caller ID of "KOSMAS FOR CONG" was
17 listed on the phone bill as one of the phone lines established on July 21, 2008. Finally, the
18 response states that FDP made and disclosed all 2 U.S.C. § 441a(d) expenditures related to the
19 voter identification calls that included references to Kosmas, but did not include the amount of
20 the expenditures. *Id.* at 5.

21 In its August Monthly Report, covering the period of July 2, 2008-July 31, 2008, FDP
22 disclosed that it made no coordinated party expenditures. In its September Monthly Report,
23 covering the period of August 1, 2008-August 31, 2008, FDP disclosed that it made \$5,068.66 in

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1 coordinated party expenditures. According to the FEC disclosure database, FDP made \$5,068.66
2 in coordinated party expenditures, all before the August 26, 2008 primary election. FDP,
3 however, failed to file the requisite Schedule F disclosing how the funds were spent and which
4 federal candidates it supported with the expenditures. On its 12-Day Pre-General Report, FDP
5 disclosed to the Commission that its total coordinated party expenditures for the 2008 general
6 election were \$31,367, but FDP again failed to file the requisite Schedule F, disclosing how the
7 funds were spent and which federal candidates it supported with the expenditures. Neither the
8 FDP's or the Kosmas Committee's reports disclose any FDP contributions to the Kosmas
9 Committee during the 2008 cycle under 2 U.S.C. § 441a(a)(2)(A).

10 **B. Analysis**

11 **1. Coordinated Party Expenditures**

12 The complaint identifies two ways that the FDP may have made coordinated party
13 expenditures on behalf of the Kosmas Committee: (1) by using FDP phone lines for phone banks
14 advocating Suzanne Kosmas' election, and (2) by using FDP office space. In the 2008 cycle,
15 FDP was eligible to spend \$42,100 in coordinated expenditures on behalf of a candidate for the
16 House of Representatives in the general election, including expenditures made both before and
17 after a candidate receives the party's nomination.¹ 2 U.S.C. § 441a(d), 11 C.F.R. § 109.34, 73
18 Fed. Reg. 8696 (Feb. 14, 2008). In addition to coordinated party expenditures, FDP was
19 permitted to make contributions of \$5,000 for both the primary and general elections to
20 candidate committees under 2 U.S.C. § 441a(a)(2)(A). Any expenditure made by FDP "in
21 cooperation, consultation or concert, with, or at the request or suggestion of," Suzanne Kosmas

¹ A state political party may make coordinated party expenditures before or after a candidate has been nominated, and all pre-nomination coordinated party expenditures are subject to the limitations whether or not the candidate receives the party's nomination. 11 C.F.R. § 109.34.

or the Kosmas Committee constitutes a contribution to the Kosmas Committee, and counts towards FDP's coordinated party expenditure limits or its contribution limits. 2 U.S.C. § 441a(a)(7)(B)(i). As discussed below, it appears that the potential coordinated party expenditures alleged in the complaint, if they in fact occurred in whole or in part, do not exceed the \$42,100 coordinated party expenditure limit allotted to the FDP for making expenditures on behalf of Suzanne Kosmas and the contribution limit to the Kosmas Committee.

a. Phone Bank

The complaint alleges that Kosmas Committee staff utilized FDP phone lines for a phone bank in which the Kosmas Committee staff represented themselves as FDP employees and advocated for Suzanne Kosmas' election. Under the Commission's regulations, a political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of the candidate and therefore constitutes an expenditure on behalf of the candidate, when the communication satisfies the three-pronged test set forth in 11 C.F.R. § 109.37: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the content standards set forth in 11 C.F.R. § 109.37(a)(2); and (3) the communication satisfies at least one of the conduct standards set forth in 11 C.F.R. § 109.21(d). As explained below, it appears that the telephone calls in question meet all three prongs and therefore are coordinated political party communications.

The first requirement, or the payment prong, is met when the communication is paid for by a political party committee. Since FDP admitted that it paid for the telephone calls, and provided its telephone bills as proof of payment, the first prong is met. 11 C.F.R. § 109.37(a)(1), Response at 1, Exhibit 2.

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1 The second prong, the content standard, is satisfied if, in relevant part, a public
2 communication refers to a clearly identified House candidate and is publicly disseminated in the
3 clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary
4 election. 11 C.F.R. § 109.37(a)(2)(iii)(A). A "public communication" includes a "phone bank,"
5 or more than 500 telephone calls of identical or substantively similar nature within any 30-day
6 period. 2 U.S.C. §§ 431(22) and (24). It appears that the calls in question are a phone bank, and
7 therefore a public communication, because respondents did not dispute the allegation that
8 "hundreds if not thousands" of calls were made across the district, the calls were similar in
9 content because there they were based on a script, and the calls were made within a 30 day time
10 period, from at least from July 30, 2008, as indicated in the complaint, until the complaint was
11 filed on August 12, 2008. The calls satisfy the remaining criteria for the second prong because
12 the calls referred to Suzanne Kosmas, included express advocacy messages of support for
13 Kosmas, and the calls took place within 90 days before the August 26, 2008 primary election in
14 Florida's 24th congressional district. See MUR 5564 (Knowles) (phone calls satisfied the content
15 prong when the calls qualified as public communications because they clearly referenced Senate
16 candidate Tony Knowles and a majority were made within 90 days of the primary election to all
17 Alaska residents).

18 The third prong, or the conduct standard, is fulfilled, in relevant part, if the
19 communication "is created, produced, or distributed at the suggestion of a person paying for the
20 communication and the candidate, authorized committee, or political party committee assents to
21 the suggestion" whether or not there is agreement or formal collaboration. 11 C.F.R.
22 § 109.21(d)(1)(ii). The complaint suggests that Kosmas Committee staff were involved in
23 making the calls. The response states that the phone calls were made by FDP volunteers,

1 supervised by FDP staff, and explicitly states, at the bottom of the script "authorized by Suzanne
2 Kosmas for Congress." Response at 3. Since information indicates the Kosmas Committee
3 assented to the calls by authorizing them, the phone communications satisfy the conduct
4 standard. Given that the phone calls fulfill all three of the party coordinated communication
5 prongs, the phone calls are party coordinated communications. See MUR 5564 (Knowles) (the
6 Alaska Democratic Party's expenditures for phone calls constituted party coordinated
7 communications when the calls were public communications, referenced the candidate, were
8 made in the requisite time period and the candidate's committee was materially involved in the
9 content of the communications).

10 To determine the costs attributable to the Kosmas Committee, the Commission's
11 regulations specify that "[i]n the case of a phone bank, the attribution shall be determined by the
12 number of questions or statements devoted to each candidate as compared to the total number of
13 questions or statements devoted to all candidates." 11 C.F.R. § 106.1(a). The complaint's
14 description of the alleged "script," based on one recipient's phone conversation, only references
15 Suzanne Kosmas. Complaint, Attachment 2. The script provided in the response contains four
16 questions regarding four different Democratic candidates, including Suzanne Kosmas, and also
17 directs callers to visit the Kosmas Committee web site. Response at 3. Further, FDP represents
18 that it "used [section] 441a(d) funds to pay the salaries and the telephone charges related to these
19 voter identification calls," but it does not provide any information about the total dollar amount
20 of coordinated party expenditure funds used. *Id.* According to the phone bill attached to the
21 response, FDP incurred charges of \$1,723.43 for phone service and set-up during the time period
22 of July 15, 2008-August 22, 2008. *Id.*, Exhibit 2. In addition, FDP provided salary authorization
23 information for three employees: Kristin Tilley, hired July 1, 2008 and paid \$1,750 bi-monthly;

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1 Paolo Mastrangelo, hired July 14, 2008 and paid \$1,000 bi-monthly; and Michael Yaros, hired
2 July 21, 2008 and paid \$1,000 bi-monthly. *Id.*, Exhibit 1. The salary authorizations do not
3 include total salary costs for the phone banks, but pro-rated salaries for the three employees for
4 July 15-31 and August 1-26, 2008, the time period between the phone line set-up and the
5 primary, yield a total salary calculation of \$9,894.58, if the employees' entire salary were
6 attributed to the phone bank. Thus, based on the available information, the total cost of the entire
7 phone bank, including salaries and phone costs, could be as high as \$11,600 dollars.

8 The available information does not adequately resolve the amount of coordinated party
9 expenditures that FDP should have allocated for the phone banks. However, the use of
10 Commission resources to investigate this matter is not warranted, because even if all of the costs
11 of phone set-up, service and the salaries of the three employees provided were attributed to the
12 Kosmas Committee, the amount would likely not exceed the \$42,100 coordinated party
13 expenditure limit.

14 **b. Use of FDP Office Space as Kosmas Committee Headquarters**

15 The complaint alleges that the Kosmas Committee utilized FDP office space. The
16 Commission's regulations state that expenditures for rent, personnel, overhead, general
17 administrative and other day-to-day costs of political committees need not be attributed to
18 individual candidates, unless these expenditures are made on behalf of a clearly identified
19 candidate and the expenditure can be directly attributed to that candidate. 11 C.F.R.
20 § 106.1(c)(1). If the Kosmas Committee was actually utilizing the FDP office as its campaign
21 office, the cost of using the facilities, including the rent, utilities and possibly office equipment
22 would be expenditures directly attributed to Kosmas, and would be applied to FDP's coordinated
23 party expenditure limit or its contribution limit. *See* 11 C.F.R. § 109.20(b).

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1 The available information, however, does not indicate that the Kosmas Committee did so.
2 FDP refutes the complaint's allegations by stating that it invited the Kosmas Committee and
3 other state Democratic candidates to send campaign literature to the FDP for display and hung
4 Kosmas posters in FDP office windows following that request. Response at 2. It further
5 explains that the signs were taken down when the complainant complained. *Id.* at 4. The
6 response also maintains that the alleged Kosmas staffers that the complaint asserts were seen in a
7 FDP office were actually former Kosmas Committee staff employed by FDP at the time. *Id.*
8 Moreover, the respondents maintain that the caller ID on FDP phone lines that stated "Kosmas
9 Committee" was an error by the phone company, and was corrected when FDP discovered the
10 error. *Id.* at 3. The response does not address the e-mail attached to the complaint, sent by a
11 Kosmas Committee staffer that invites Kosmas supporters to a grand opening party, and lists
12 "our address" as 213 South Hopkins Avenue in Titusville. Publicly available information lists
13 213 South Hopkins Avenue in Titusville as an FDP office. The Kosmas Committee's website
14 identifies its campaign office address as 920 3rd Avenue, New Smyrna Beach, Florida.

15 It appears that the FDP had several offices in Florida, including the office in Titusville
16 where the alleged Kosmas "grand opening party" was held, and an office in Oviedo, FL, which
17 was featured in the attachment to the complaint with the pictures of the alleged Kosmas
18 Committee office. While the Kosmas Committee may have used FDP office space for events,
19 the publicly available information on the location of the offices and the factual assertions in the
20 response indicate that the Kosmas Committee did not use FDP office space as its campaign
21 office as alleged. Specifically, FDP's statements that its staff and volunteers, not the Kosmas
22 Committee staff, made the phone bank calls from its own phone lines, and that the caller ID of
23 "Kosmas Committee" on the phone line was a mistake, refutes the complaint's key allegation

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1 that may have indicated the Kosmas Committee was using FDP's space as the Kosmas campaign
2 office. FDP's assertions that it unilaterally removed Kosmas campaign posters from its office
3 windows after the complainant requested it do so, and that the alleged Kosmas employees who
4 were purportedly seen in FDP offices were actually FDP employees who no longer worked for
5 the Committee further undercuts the premises of the complaint's allegation. Accordingly, FDP's
6 expenditures for rent, personnel, overhead, general administrative and other day-to-day costs
7 associated with its offices were not made on behalf of Suzanne Kosmas nor were they directly
8 attributable to Suzanne Kosmas. See 11 C.F.R. § 106.1(c). Therefore, FDP's expenditures for
9 such costs need not be attributed to its coordinated party expenditure limit or its contribution
10 limit to the Kosmas Committee. While it is possible that the Kosmas Committee might have
11 owed FDP a rental fee for the use of space for an event if FDP charges other such fees, which
12 may have constituted an additional coordinated expenditure, the cost would likely have been *de*
13 *minimus*.

14 c. Conclusion

15 Based on the foregoing, FDP's activities benefitting the Kosmas Committee were likely
16 in amounts below the \$42,100 coordinated party limit. As such, FDP would not have made a
17 contribution to the Kosmas Committee in excess of the \$5,000 maximum limit per election.
18 Therefore, the Commission has found no reason to believe that FDP violated 2 U.S.C.
19 §§ 441a(d) and 441a(a)(2)(A).

20 2. Disclosure of Coordinated Party Expenditures

21 The complaint suggests that FDP failed to properly disclose to the Commission
22 expenditures FDP made on behalf of the Kosmas Committee for phone banks and office space.
23 FDP's expenditures benefitting the Kosmas Committee were likely coordinated party

1 expenditures, as discussed *supra*, and in the response, FDP maintains that all of the party's
2 coordinated expenditures were disclosed in its reports to the Commission. While FDP disclosed
3 coordinated party expenditures of \$5,068.66 on its September Monthly Report and \$31,367 on its
4 12 Day Pre-General Report, it failed to attach the requisite Schedule F to both reports to disclose
5 how it spent the 441a(d) funds and which federal candidates it supported with the expenditures.
6 Therefore, it appears that FDP violated 2 U.S.C. § 434(b) by failing to properly disclose its
7 coordinated party expenditures. However, the Reports Analysis Division will send a Request for
8 Additional Information ("RFAI") regarding the omission of schedules in the normal course, and
9 the Committee will have the opportunity to amend its reports at that time. Accordingly, the
10 Commission dismisses the allegation that FDP failed to properly report its coordinated party
11 expenditures pertaining to the Kosmas, under its prosecutorial discretion. *See Heckler v.*
12 *Chaney*, 470 U.S. 821 (1985).

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